

April 20, 2012

**FILED VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Attention: Wireline Competition Bureau  
Competition Policy Division

**RE: Qwest Corporation and All West Communications, Inc.  
Domestic Section 214 Application  
WC Docket No. 12-66**

Dear Ms. Dortch:

This letter is written on behalf of Qwest Corporation ("Qwest") and All West Communications, Inc. ("All West") to clarify portions of the "Non-Streamlined Application for Assignment of Assets Subject to Domestic Blanket Section 214 Authorization" which they filed in the captioned docket on March 8, 2012.

The application requests Section 214 authorization for the following four areas subject to a pending petition for study area waiver: (1) a 73-building lot portion of a private development (the "Promontory Ranch Club boundary modification"); (2) a commercial gas production area in the southwestern corner of Uintah County, Wyoming (the "Uintah County boundary modification"); (3) an unserved 135-square mile area between Qwest's Wasatch, Utah exchange and All West's Coalville, Utah exchange (the "Coalville exchange addition"); and (4) a small portion of Qwest's Wasatch, Utah exchange that was previously served by basic dial-tone service only from Qwest's Evanston, Wyoming central office (the "Coalville boundary modification").

The Promontory Ranch Club boundary modification and the Uintah County boundary modification were included in the initial "Joint Petition for Study Area Waivers" filed by Qwest and All West in CC Docket No. 96-45 on November 30, 2007. The Coalville exchange addition and the Coalville boundary modification were included in the "Amendment to Joint Petition for Study Area Waivers" filed by Qwest and All West in CC Docket No. 96-45 on December 19, 2008.

The purpose of the clarifications herein are to show the Bureau that Qwest had never constructed interstate or intrastate telecommunications facilities (including interstate exchange access facilities) in the areas encompassing the Promontory Ranch Club boundary modification, the Uintah County boundary modification and the Coalville exchange addition, and has not served local

exchange customers in these areas. With respect to the Coalville boundary modification area, Qwest did at one time serve eight (8) customers via converted toll lines, but did not sell any of its facilities or customer accounts to All West. Rather than traditional assignments or transfers of control of the type that are normally subject to Section 214 application requirements, the four situations are more accurately viewed as circumstances where entering facilities-based competitors have taken territory and/or customers away from an incumbent.

**Promontory Ranch Club boundary modification.** As recognized by the Public Service Commission of Utah ("Utah Commission") in its November 29, 2006 *Report and Order Approving Stipulation* in Docket No. 02-2270-01 (attached as Exhibit 1 to the subject Application), Qwest at that time had not constructed any telecommunications facilities within the 73-building-lot area that the Utah Commission was approving for transfer to All West's Jordanelle, Utah exchange. Qwest has never subsequently constructed or operated any local exchange or exchange access facilities within the 73-lot area, and has never served (and is not now serving) any local exchange customers within that area.

The Promontory Ranch Club boundary modification did not arise from a transaction between Qwest and All West, but rather from a 2002 petition by All West to the Utah Commission for the inclusion of the entire Promontory Ranch Club in All West's Jordanelle exchange. At that time, the eastern portion of the Promontory Ranch Club was located in All West's Jordanelle exchange, while the western portion was located in Qwest's Park City, Utah exchange. The Promontory Ranch Club developer had declined to comply with certain Qwest tariff provisions, with the result that Qwest had not yet constructed any local exchange facilities in the development. At the time, All West had constructed local exchange facilities in the eastern portion of the Promontory Ranch Club, while its affiliated competitive local exchange carrier ("CLEC"), All West/Utah, was providing some service in the western portion thereof. Qwest, All West and the Utah Commission staff ultimately worked out a compromise solution wherein the 73-building-lot area in the western portion of the Promontory Ranch Club was transferred to All West's Jordanelle exchange, while the remainder of the western portion continued to be part of Qwest's Park City exchange. This solution allowed a golf course to serve as a prominent natural boundary between the two exchanges. The parties reiterate that this was a boundary change only, and that no Qwest facilities or customers were assigned or transferred to All West.

After the Utah Commission order, All West took over the operations of its CLEC affiliate within the 73-building-lot area, and currently serves approximately 58 customers and 65 access lines in the area. However, because the study area waiver petition remains pending, All West has not been including the 73-building-lot area in its National Exchange Carrier Association ("NECA") cost studies or receiving high-cost support for the area.

**Uintah County boundary modification.** As recognized by the Public Service Commission of Wyoming ("Wyoming Commission") in its November 17, 1998 *Notice and Order* in Docket Nos. 70013-TA-98-14 and 70000-TA-98-432 (attached as Exhibit 3 to the subject Application), Qwest at that time had constructed no local exchange or exchange access facilities,

and did not provide local exchange service to customers, in the commercial gas production area of southwestern Uintah County, Wyoming that the Wyoming Commission allowed to be transferred from Qwest's certificated Wyoming service area to All West's certificated Wyoming service area. Qwest has never subsequently constructed or operated any local exchange or exchange access facilities within the area, and has never served (and is not now serving) any local exchange customers within the area.

The Uintah County boundary modification did not entail any transaction between Qwest and All West, but rather resulted from requests by Amoco Production Company and Anschutz Corporation to All West for service via an interconnection with a nearby All West fiber cable. At the time, the southwestern Uintah County area was served by a private radio link operated by Amoco Production Company between the area and Evanston, Wyoming.

After the Wyoming Commission order, All West interconnected with the gas production companies and began serving the area. It currently serves approximately 4 successor business customers and 10 access lines in the area. However, because the study area waiver petition remains pending, All West has not been including the area in its NECA cost studies or receiving high-cost support for the area.

**Coalville exchange addition.** As recognized by the Utah Commission in its September 11, 2008 *Order Granting Petition for Revision of Coalville Exchange Boundary* in Docket No. 08-2270-01 (attached as Exhibit 1 hereto), the 135-square mile area between Qwest's Wasatch, Utah exchange and All West's Coalville, Utah exchange previously had not been certificated to any company. It was then, and remains today, an unserved area that contains no local exchange telecommunications facilities or customers. The advantage of the addition of the area to All West's Coalville exchange and Utah study area is that All West has facilities contiguous to the area, and will be able to provide service at an early date should any future residents or businesses request it.

Because the study area waiver petition remains pending and because the area contains no facilities or customers, All West has not been including the area in its NECA cost studies or receiving high-cost support for the area.

**Coalville boundary modification.** As recognized by the Utah Commission in its September 11, 2008 *Order Granting Joint Petition to Transfer Service Territory* in Docket No. 08-049-26 (attached as Exhibit 2 to the subject Application), the Utah portion of Qwest's Wasatch exchange contained eight (8) customers at the time that the Utah Commission approved its "transfer" to All West's Coalville, Utah exchange.

The Coalville boundary modification did not arise from a sale of territory or customers, or other similar commercial transaction between Qwest and All West. Qwest did not sell to All West, and All West did not purchase from Qwest, any telecommunications facilities or customer accounts.

Rather, the boundary modification developed from local considerations arising from unique circumstances. The small, 8-customer cluster was originally served by a converted toll line from Qwest's Evanston, Wyoming central office. Qwest could provide only basic dial-tone services over these facilities, and had no plans to upgrade its facilities in the small, cross-border cluster within the foreseeable future. Some of the local residents became aware that All West had nearby fiber trunks, and requested service from it. All West was willing and able to extend its fiber facilities to serve the area, and to provide customers with advance calling features and digital subscriber line ("DSL") services. Once the matter came to the attention of the Utah Commission, All West conducted interviews with all eight customers in the area to inform them of its proposed service and rate changes and to obtain their consent to be served by All West. It reported their wishes and concerns to the Utah Commission staff.

The Utah Commission proceeding should not be characterized as either a friendly or an adversary proceeding; rather All West was responding to local customer requests rather than aggressively seeking to seize Qwest service territory whereas Qwest did not object and joined with All West as a petitioner because it had no current plans to upgrade its converted, Evanston-based toll line.

The parties believe that no Section 214 assignment and or service discontinuation applications were required before the Coalville boundary modification took place, because there was no transfer of customers or telecommunications facilities. All West essentially overbuilt Qwest's limited facilities in this area and captured all eight of Qwest's former dial-tone only customers due to the new facilities and services that All West was able to offer. Both All West and Qwest sought to comply with what they believed were the applicable federal and state regulatory requirements by seeking and obtaining the exchange boundary modification from the Utah Commission, and the requesting Commission approval in their December 19, 2008 amendment to their pending study area waiver petition shortly after Utah Commission consent was granted in September 2008. Likewise, whereas the parties did not file a Section 64.1120(e) notice and certification because there was no sale or transfer of customer accounts by Qwest to All West,<sup>1</sup> All West did in fact contact all eight affected customers, explain the service and rate changes to them, address their concerns, and report the results of these contacts to the Utah Commission. Subsequently each of the eight customers chose to switch service from Qwest to All West. Qwest continues to provide service to customers in other portions of the Wasatch exchange.

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<sup>1</sup> The discontinuance requirements of Section 214, and notice requirements of Section 64.1120(e), apply to carriers that "transfer or sell their customer bases" – neither of which occurred here. See *In the Matter of 2000 Biennial Review--Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket Nos. 00-257, 94-129, 16 FCC Rcd 11218, 11222 para. 10 n.19 (2001). This situation therefore stands in contrast to past circumstances where Commission authorization has approved the transfer of a customer base. See, e.g., in the *Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Qwest Corporation, All West Communications, Inc., All West World Connect, Carbon/Emery Telcom, Inc., Central Telcom Services, Central Utah Telephone, Inc., Emery Telcom, Hanksville Telcom, Inc. Manti Long Distance, Manti Telephone Company, Skyline Telcom, UBET Telcom, Inc., and Uintah Basin Long Distance; Joint Petition for Waiver*, CC Docket No. 94-129, 16 FCC Rcd 1543 (2000) (waiver granted to enable transfer of 35,600 access lines in twelve Utah exchanges where Qwest was discontinuing service).

Because the study area waiver petition remains pending, All West has not been including the cluster in its NECA cost studies or receiving high-cost support for the area. Since All West began serving it, the cluster has increased from 8 customers and 10 access lines, to 9 customers and 11 access lines.

### Conclusion

In light of the foregoing facts and circumstances, it appears that the subject Application should be modified to delete at least the following three areas: (1) the Promontory Ranch Club boundary modification; (2) the Uintah County boundary modification; and (3) the Coalville exchange addition. Given that Qwest never constructed local exchange or exchange access facilities nor served local exchange customers in any of these three areas, Section 214 authorization is not required because no interstate telecommunications facilities (including interstate exchange access facilities) or customers in these three areas have been, or will be, assigned or transferred by Qwest to All West.

With respect to the Coalville boundary modification, the absence of any assignment or transfer of local exchange or exchange access facilities or customers from Qwest to All West would appear to warrant deletion of this area from the Application as well. To the extent that the Bureau is unwilling to delete this area due to the presence of the eight customers formerly served by Qwest, the Application, as modified to include only the Coalville boundary modification, should be placed on Public Notice and processed by the Bureau, and no special temporary authorization should be required.

Respectfully submitted,

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cc: Jodie May, Esquire

**Exhibit 1**

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Request of All West  
Communications, Inc., for Revision of  
Exchange Boundaries

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DOCKET NO. 08-2270-01  
ORDER GRANTING PETITION FOR  
REVISION OF COALVILLE  
EXCHANGE BOUNDARY

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ISSUED: September 11, 2008

By the Commission:

On June 2, 2008, All West Communications, Inc. ("All West") petitioned to revise its Coalville Exchange boundary to incorporate non-certificated territory located between the Wasatch Exchange of Qwest territory served from Evanston, Wyoming and All West's existing Coalville Exchange boundary as set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Non-Certificated Area"). Contemporaneously, All West and Qwest Corporation ("Qwest") filed a Joint Petition To Transfer Service Area from Qwest to All West (Docket No. 08-049026). The purpose of the petitions was (1) to transfer the Qwest service area constituting the Utah portion of the Wasatch Exchange to All West (the "Transferred Area") and (2) to add the contiguous non-certificated area between the Transferred Area and All West's Exchange.

The Division of Public Utilities has recommended to the Commission that All West's Petition to Revise Exchange Boundary ("All West's Petition") be approved. The Division found that there was no current impact to customers because there are currently no customers in the area. The Division further found that All West has fiber facilities running through a portion of the area that would facilitate possible future development. The Division

further determined that there would be no immediate impact to the Universal Service Fund because the Non-Certificated Area is not eligible for federal USF support as a former Qwest property. All new plant placed in the area would be added to All West's rate base for ratemaking and state USF eligibility determinations. There was no opposition to All West's Petition.

Based on the Petition, the Division's recommendation and good cause appearing therefor, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. All West is a regulated local exchange carrier (LEC) holding a certificate of public convenience and necessity from the Commission. All West is certificated to provide local telephone services in parts of Summit, Wasatch and Rich Counties, Utah.
2. All West is the incumbent LEC in the Coalville Exchange.
3. The Non-Certificated Territory is not currently located in any LEC service area. The area is, however, experiencing seasonal growth.
4. If the Non-Certificated Territory is added to All West's Coalville Exchange, All West acknowledges that it will have carrier of last resort obligations with respect to the Non-Certificated Area, and would be eligible for eligible telecommunications carrier (ETC) status for the Non-Certificated area.
5. All West is well situated to serve the Non-Certificated Territory as it currently has facilities available in the Coalville Exchange, contiguous with this area, and would be able, upon request, to provide dial tone and additional telecommunications services to the Non-Certificated Territory.



**CONCLUSIONS OF LAW**

1. It is in the public interest to allow All West to have the ability to service the Non-Certificated Territory, which is adjacent to and contiguous with the All West Coalville Exchange, by placing Non-Certificated Territory within the service territory of All West as the incumbent LEC.
2. It is in the public interest to grant All West ETC status with respect to the Non-Certificated Territory.

**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

Pursuant to Utah Code Section 54-4-1, All West's Petition for Revision of Exchange Boundary is granted. All West's Coalville Exchange Boundary is hereby revised to include the unserved, currently non-certificated area near Coalville, Utah, as described in Exhibit "A" attached hereto and by this reference made a part hereof. All West is granted ETC status with respect to the entire revised boundary of the Coalville Exchange.

DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of September, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#58905

DOCKET NO. 08-2270-01

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EXHIBIT A

DOCKET NO. 08-2270-01

All West Coalville Exchange Revision of Exchange Boundary

Open Area Boundary Description

Sections 12,13, & 24 Township 3 North Range 5 East SLBM  
Sections 1-22 Township 3 North Range 6 East SLBM  
Sections 1-24 Township 3 North Range 7 East “ “  
Sections 4,5,6,7,8,9, & 18 Township 3 North Range 8 East SLBM  
Sections 13-28 & 33-36 Township 4 North Range 6 East SLBM  
Sections 1-4 & 8-36 Township 4 North Range 7 East SLBM  
Sections 4-9, 16-21, & 28-33 Township 4 North Range 8 East SLBM  
Sections 35 & 36 Township 5 North Range 7 East SLBM  
Sections 31-33 Township 5 North Range 8 East SLBM